

RECONSTRUCTION OF HOLOGRAPHIC WILLS TO ENSURE THE LEGITIMATE INTENT OF THE TESTATOR

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ABSTRACT

The principal challenge addressed in this study is the discordance between the formal procedural requirements governing holographic wills and the exigent circumstances that demand swift administration of succession. The objective of the research is to analyze the legislative reformation of holographic wills so as to uphold the testamentary intent of a rightful heir. Employing a normative methodology, the study scrutinizes the pertinent statutory provisions and adopts a jurisprudential framework to assess the underlying principles of justice in the reconstruction of testamentary law. Findings reveal that Articles 932 and 952 of the Civil Code, which regulate holographic wills, must be adapted to accommodate evolving social conditions. Rigid formalities, such as the compulsory custodianship of the will by a notary, are incongruent with the practical realities that require expediency and flexibility in will processing, particularly in emergencies like severe illness or imminent death. Consequently, reforming these provisions is essential to enable the execution of the heir's testamentary wishes in a manner consistent with the doctrine of substantive justice. The study therefore recommends amending the provisions relating to holographic wills to introduce procedural flexibility while preserving the core tenets of justice. In conclusion, the reform of holographic will legislation constitutes a substantive contribution toward a succession system that is more responsive to societal needs and provides a foundation for the development of a modernized inheritance regime.

Keywords: Holographic Wills, Inheritance, Legal Reconstruction, Progressive Law, Substantive Justice.

INTRODUCTION

As mortal beings, humans cannot avoid death. Death will come suddenly in the life of every human being without prior knowledge of its arrival.(Choi et al., 2023). One of the legal consequences of death is the division of inherited property. Thus, death leaves not only sorrow but also wealth.(Wang, 2022). To avoid legal problems after death, the property owner can arrange the distribution of his or her assets through a will.(Djuariah, 2022).

A will is a legal instrument that allows a person to express their testamentary intentions regarding the distribution of their estate.(Haris Sanjaya, 2018). The Civil Code recognizes several forms of wills, including the holographic will, which is written in the testator's own hand. Article 932 of the Civil Code expressly regulates the requirements for holographic wills, including the obligation to deposit the will with a notary for it to have legal effect. In practice, however, testators do not always comply with these formalities, particularly when a will is made in emergencies such as wartime, sea voyages, pandemics, or serious illness.(Tambajong et al., 2023).

Emergencies of an urgent nature often prevent testators from fulfilling the formal procedures required by law.(Kurniasari et al., 2021). Consequently, the legal

validity of a holographic will, one written personally by the testator without being deposited with a notary, is frequently contested. This raises the issue of how to safeguard the testamentary intent of a testator who is substantively entitled to dispose of their estate, but who fails to comply with administrative formalities.(Nyoman & Wardana, 2022). Such circumstances illustrate the tension between strict formal requirements and the pursuit of justice in the context of inheritance law.

This legal issue becomes particularly significant when a court is confronted with a will made personally by the testator without notarial formalities, yet reflecting a genuine and deliberate intent. A notable example is the Palangka Raya District Court Decision No. 27/Pdt.G/2019/PN.Plk, in which the court upheld the validity of a holographic will despite it not having been deposited with a notary. In its reasoning, the court emphasized the primacy of the testator's substantive intent over the formal requirements that had not been fulfilled.

The decision reflects a shift in perspective regarding the form and legal effect of holographic wills. Law is no longer interpreted in a strictly rigid and textual manner, but is beginning to embrace a more responsive approach to social realities.(Sarumpaet et al., 2024). Accordingly, the legal issue at stake is not merely whether the will is formally valid, but whether the law itself requires reconstruction to address broader demands of justice. This consideration provides the basis for a more comprehensive review of Article 932 of the Civil Code.

This research departs from the observation that law often lags in responding to rapidly changing social dynamics. In times of emergency, the law must demonstrate flexibility without compromising its integrity. When the law fails to address societal needs, it risks losing its function as both regulator and protector.(Shafiyah&Gultom, 2024). Disregarding the testator's will solely because it does not comply with administrative procedures undermines the principle of substantive justice. Hence, a legal approach is required that balances adherence to formal procedures with the protection of individual rights.

The reconstruction of rules governing holographic wills is essential to ensure that law functions not only as an instrument of certainty, but also as a guarantor of justice and humanity. Previous research indicates that when the requirements of Article 932 of the Civil Code are not fulfilled, a will lacks binding force due to legal defects, as stipulated in Article 935 of the Civil Code(Nyoman & Wardana, 2022). Other studies have also shown that wills may exist without the knowledge of the heirs, yet they retain legal force as long as they are made following applicable legal provisions; moreover, heirs who fail to execute such wills may be subject to claims of unlawful conduct(Muslimah &Kartikawati, 2022). Legal adjustment to social realities should not be viewed as an abandonment of rules, but rather as a form of healthy and necessary adaptation. Accordingly, this issue highlights the need to reconstruct inheritance law norms so that they can become more adaptive and responsive.

This research not only departs from the existing positive law but also takes into account philosophical and sociological values embedded in inheritance practices. It advances the view that law is not a static set of rules, but must remain dynamic as a product of social engineering that continues to evolve.(Nainggolan &Adhari, 2023). Accordingly, the reconstruction of legal provisions on holographic wills is part of the broader effort to render the law more relevant and humane.

The main objective of this study is to analyze the legal effect of holographic wills that are not deposited with a notary but are consciously made and fulfill the substantive requirements of the testator's intent. This research also aims to examine the necessity of revising Article 932 of the Civil Code to make it more adaptable to the social needs and emergencies that frequently accompany the creation of wills. Furthermore, it aims to advance both juridical and philosophical arguments that law should not merely emphasize formal legality but also prioritize substantive justice. In addition, this study highlights the importance of safeguarding the testator's freedom of will without being constrained by procedures that are difficult to satisfy in critical situations. Employing legal theory as a means of social engineering, this research aspires to contribute meaningfully to the reform of inheritance law in Indonesia, particularly in ensuring the realization of a testator's final wishes regarding their estate after death.(Singh et al., 2022).

METHOD

This research employs a normative juridical approach, as its primary focus lies on the validity of principles and applicable legal norms.(Qamar &Rezah, 2020). The analysis centers on the provisions governing holographic wills under the Civil Code, with particular attention to the substance of the relevant articles. The study of legal doctrine and general principles is also undertaken as the foundation for argumentation. This approach is chosen because it enables the identification and examination of normative issues arising from legal provisions that are considered no longer adequate.

The data utilized in this research consist of secondary data, comprising both primary and secondary legal materials, collected through a literature study(Suteki&Taufani, 2020). Primary legal materials include statutes and regulations, particularly the Civil Code, as well as relevant judicial decisions. Secondary legal materials comprise legal literature, scholarly journals, and expert opinions related to inheritance law and legal theory.

The analytical technique employed in this study is qualitative, whereby data are presented in a descriptive-analytical manner(Soekanto&Mamudji, 2015). The researcher interprets legal provisions both grammatically and teleologically.(Mertokusumo, 2004). Grammatical interpretation is applied to examine the literal meaning of Article 932 of the Civil Code, particularly the phrases "*written entirely by one's hand*" and "*entrusted to a notary*", in order to demonstrate how a purely textual understanding of these provisions may lead to procedural rigidity. Teleological interpretation is further employed to assess the alignment between legal objectives and substantive needs.(M. Manullang, 2019). In this context, the purpose is to prevent the forgery of wills while simultaneously protecting the genuine intent of the testator, thereby creating space for critique of excessive formalism by emphasizing the value of justice underlying Article 932 of the Civil Code.

The analysis is further enriched through a legal-philosophical approach, particularly by employing Mochtar Kusumaatmadja's theory of law as a means of social engineering, to evaluate the necessity of legal adjustments to societal dynamics. The findings of this analysis are then utilized to formulate a legal reconstruction that accords with the values of justice and the needs of the community. Finally, the conclusions are drawn using a deductive method, consistent with the character of legal research that

proceeds from positive norms (Article 932 of the Civil Code) and applies them to specific problems, namely the making of holographic wills without notarial involvement.(Nugroho et al., 2020).

RESULT AND DISCUSSION

A. Formal Provisions of Holographic Wills in the Indonesian Inheritance Legal System in the Perception of Substantive Justice

The primary purpose of a testator in making a will is to arrange the distribution of their estate in order to prevent disputes among the heirs. Under the Civil Code, inheritance may occur either by operation of law (*ab intestato*) or based on a will (*testament*)(Dwi Ratna Kartikawati, 2021). A will affects not only the distribution of the inheritance but also the order of heirs.(Wang, 2022). For this reason, a will must be made in writing to provide evidentiary strength once the testator has passed away.(Munir, 2023).

Regarding the written requirements of a will, Article 932 of the Civil Code regulates the conditions for the validity of holographic wills. The article stipulates that a will must be handwritten and signed by the testator. One of the most significant formal requirements is the obligation to deposit the will with a notary.(Agustina, 2020). This requirement is intended to ensure the legitimacy of the will and to prevent potential disputes in the future. Failure to comply with these formalities may render the will invalid or unenforceable in a court of law.

The position of a will within the inheritance system under the Civil Code is crucial, as it constitutes an authentic expression of the testator's intent. A will enables the transfer of inheritance rights by the testator's wishes, and in some cases, may even override statutory provisions if no other governing rules apply. However, the enforceability of a will depends not only on its substantive content but also on compliance with the formal requirements prescribed by law.(Fernando, 2020). Thus, even when a will faithfully reflects the testator's intent, failure to satisfy the requisite procedures may result in legal defects.

Articles 951 and 952 of the Civil Code provide exceptions to the formal requirements stipulated in Article 932, particularly for testators under emergency circumstances. These provisions were designed to accommodate situations in which a testator faces critical conditions, such as severe illness, natural disasters, armed conflict, or sea voyages, that make it impossible to comply with the requirement of depositing the will with a notary. Article 951 further establishes a specific time limit within which such a will must be submitted once the emergency has ended. This exception is significant because it ensures that the testator retains the ability to express final wishes in urgent situations, without being hindered by formalities that are objectively unattainable.

Nevertheless, a persistent tension exists between substantive and procedural objectives within inheritance law. On the one hand, the legal system aims to protect the testator's freedom of will. On the other hand, the imposition of rigid formalities, such as mandatory notarial custody, may create barriers that undermine the very purpose of testamentary freedom, particularly in emergencies. Excessive proceduralism can therefore stand in contrast to the principle of substantive justice, which prioritizes the authentic intent of the testator over rigid compliance with technical requirements. This

tension raises a fundamental question: should the law prioritize the strict application of statutory procedures, or should it place greater emphasis on substantive justice that fulfills the moral and social purposes of inheritance law?(Yunanto, 2019).

An illustrative example of this issue can be found in the decision of the Palangka Raya District Court No. 27/Pdt.G/2019/PN.Plk. In that case, the testator drafted a holographic will that was not deposited with a notary. Nevertheless, the judge recognized the validity of the will, reasoning that the testator had unequivocally expressed his intentions without coercion or undue influence. This ruling illustrates how the court may uphold the enforceability of a will, even when formal requirements are not fully met, as long as the testator's substantive intent can be established.

Criticism of rigid formal requirements in inheritance law is particularly significant in emergency contexts. Procedural rules mandating the deposit of a will with a notary may create substantial obstacles, especially when the testator is in circumstances that make compliance impossible. In many cases, such procedural rigidity places heirs at a disadvantage, as their expressed wishes cannot be respected merely due to administrative shortcomings. Accordingly, inheritance law must incorporate a degree of flexibility to address extraordinary circumstances of this kind.

Moreover, an excessive emphasis on formality risks undermining the principle of substantive justice(Husni et al., 2024).A will that genuinely reflects the free will of the testator, even if it does not strictly comply with formal requirements, should still be regarded as valid provided that there is no evidence of coercion or undue influence. This highlights the need to accommodate a degree of procedural flexibility in the regulation of holographic wills, ensuring that the law remains responsive to evolving social realities.

Revisions to Article 932 of the Civil Code are therefore necessary to create greater flexibility for testators who, under certain circumstances, are unable to comply with the notarial custody requirement. Emergency conditions, such as severe illness or physical limitations preventing the testator from appearing before a notary, illustrate the importance of such reform. By allowing for these exceptions, the law can become more adaptive to individual circumstances while still preserving the safeguards essential to the inheritance process. Accordingly, a legal mechanism should be established to recognize the validity of holographic wills even when they are not deposited with a notary.

One alternative approach is to recognize the validity of a holographic will without requiring its notarization. For instance, the will could be validated through the presence of credible witnesses who can attest that the testator expressed his or her wishes freely and without coercion. In addition, medical evidence, such as a physician's statement confirming the testator's condition, may also serve as proof of validity in emergencies. Such measures are crucial to ensure that the will continues to reflect the testator's genuine intent while still respecting formal legal safeguards.

Furthermore, other forms of written evidence demonstrating the authenticity and voluntariness of the testator's will may also be admitted to establish the validity of a holographic will. This approach enables testators to determine the disposition of their estate, even in circumstances where compliance with rigid formalities is impossible. As affirmed in Article 875 of the Civil Code, the testator, as the property owner, retains the authority to designate the distribution of his or her estate according to personal wishes

upon death.(Boyoh et al., 2021). For this reason, it is necessary to establish clear criteria for the requirements of a valid holographic will. These criteria preserve the integrity of the law while safeguarding the principle of prudence in inheritance matters. Such criteria could include reliable and verifiable written evidence.

A harmonized model between the principle of testamentary freedom and legal procedures needs to be pursued to ensure that both aspects can operate in tandem. A more flexible procedure may be implemented while still prioritizing the heir's free will as the fundamental legal basis for the validity of a will. Thus, even if specific formal requirements cannot be fulfilled, the will should remain legally enforceable as long as it meets clear substantive conditions. Safeguarding the heir's free will without undermining the integrity of procedural law is therefore essential. Any proposed reform must be carefully designed to strike a balance between legal flexibility and the principle of prudence, which must consistently guide the application of inheritance law. A strict verification mechanism nevertheless remains necessary to ensure that a will genuinely reflects the heir's intentions and is not influenced by parties acting in bad faith.

Ethical and practical considerations in revising these provisions are also indispensable to prevent potential misuse. One of the principal risks to be anticipated is the possibility of forgery.(Yasim et al., 2022)or the exploitation of the heir's illness to manipulate the substance of the will(Maghfiroh et al., 2024). Accordingly, it is imperative to develop a robust verification framework that guarantees the will is made voluntarily, free from coercion, and authentically represents the heir's testamentary wishes.

The implementation of reforms concerning the custody of holographic wills requires careful consideration both from the legislature and in its practical application. Such reforms will inevitably affect the existing legal framework; therefore, thorough preparation and adequate dissemination are necessary to prevent unpreparedness or potential misuse. The primary challenge lies in ensuring that, despite the introduction of more flexible procedures, the quality and integrity of the legal system are not compromised.

Potential legal risks arising from this procedural flexibility include the possibility of abuse by parties with vested interests. Accordingly, appropriate mitigation measures must be introduced, including enhanced supervision and more rigorous verification mechanisms. For instance, the use of credible witnesses and reliable supporting evidence should be mandated to prevent forgery or falsification. In this way, the reconstruction of the provisions governing holographic wills can be justified without undermining the fundamental principle of prudence in the law of inheritance.

In conclusion, the reconstruction of the rules on the custody of holographic wills under the Civil Code is crucial to accommodate social developments and the need for greater legal flexibility. Such reforms provide heirs with a more practical avenue for determining the distribution of their estate, even in the absence of strict formal requirements. Provided that robust verification and control mechanisms are maintained, these changes have the potential to reinforce substantive justice and safeguard the testamentary freedom of heirs.

B. The Principle of Free Will as a Substantial Basis for the Validity of a Will according to the View of MochtarKusumaatmadja

The principle of free will, or autonomy of will, is the main principle in the making of wills. The testator has the right to determine how their assets will be distributed after death. This concept asserts that the testator is free to decide who will receive the inheritance and in what proportions. Thus, a will is an expression of the testator's free will that must be respected by the legal system, even though it does not meet all the formal requirements stipulated by Article 932 of the Civil Code.

In inheritance law, a will not only functions as a legal instrument but also as a form of respect for the testator's freedom in determining the fate of their property after death.(Luh Putu Manik Suryani et al., 2024). This recognition of the testator's free will strengthens the position of the will as a realization of human rights in the field of inheritance. Therefore, the enforceability of a will must be viewed beyond mere formal procedures. The basis of substantive justice in inheritance emphasizes the reasonableness and applicability of the testator's will rather than strict adherence to formalities. Some legal theories, such as responsive legal theory and law as a means of social engineering, support a more flexible approach to legal formalism. According to this view, the law should focus not only on procedure but also on achieving substantive justice for the individual.(Nafis & Rahmad, 2020), in this case, the testator.

The implications of free will on the validity of holographic wills are increasingly relevant when formal requirements, such as custody before a notary, are not fulfilled. If the testator's will can be proven and shown to be free from coercion, it should remain valid. This is because the law must prioritize the clarity and sincerity of the testator's intent as the primary factor in determining the validity of a will. The absence of certain formalities should not serve as a reason to invalidate a will that reflects the wishes of the testator.

Nevertheless, the legal validity of a will that is not deposited with a notary continues to be a subject of debate. In this context, the substance of the testator's will becomes the central consideration. As long as the testator's intent can be proven with valid and reliable evidence, the will should be regarded as enforceable. Accordingly, the court needs to provide room for a more substantive interpretation of the testator's will, rather than merely emphasizing unmet administrative requirements.(Fadhli et al., 2025).

Judicial practices concerning the application of the principle of free will in the validation of wills that do not fulfill all formal requirements demonstrate that inheritance law allows a degree of flexibility. Several court rulings indicate that judges may take into account the clarity and sincerity of the testator's intent, even when procedural requirements are not entirely satisfied. This demonstrates that courts can assess the enforceability of a will primarily based on the testator's free will, which is more substantive than merely adhering to formalities. Illustrative examples can be found in judicial decisions where courts have upheld wills that lacked notarial custody, recognizing that the absence of such formality does not automatically invalidate the testamentary disposition(Pengadilan Tinggi Palangkaraya, 2019). Judges generally hold that the most important element is the clarity of the testator's intent, which may be established through witnesses or other relevant evidence. Judicial decisions that uphold wills despite the absence of specific formal procedures demonstrate that the law is capable of responding to societal needs.

Legal theory as a means of social engineering, as articulated by Mochtar Kusumaatmadja, is highly relevant to the reconstruction of legal provisions concerning holographic wills. Law functions not only as a set of rules governing relationships between individuals, but also as an instrument for fostering social change in response to societal needs.(Triana et al., 2024). This implies that the law must be capable of adapting to evolving social conditions—such as the drafting of wills in emergencies where compliance with formal procedures is impossible—without compromising the values of justice. The prevalence of emergencies, including serious illness or imminent death, highlights the necessity of more flexible procedures in the regulation of wills. Accordingly, legal theory as social engineering emphasizes the importance of legal adaptation in providing practical solutions in contexts where procedural flexibility is indispensable.(Sundari et al., 2023).

The reconstruction of provisions concerning the custody of holographic wills can provide heirs with easier and faster access to make legal decisions within a limited timeframe. The law must ensure that a valid will continues to reflect the testator's free will without being constrained by formalities that may be irrelevant to their condition. By allowing flexibility in the procedures for drafting a will, the inheritance law system becomes more efficient and responsive to societal needs. Such a system enables individuals to make important legal decisions without being hindered by rigid procedures that often fail to reflect social realities, while also creating opportunities for further development of inheritance law in the future.

Moreover, this reconstruction is not only significant for cases involving holographic wills but may also serve as a precedent for broader reforms in the law of inheritance. By providing a concrete example of how legal provisions can adapt to changing social conditions, this reconstruction contributes to strengthening the inheritance law system as a whole. The future of Indonesia's inheritance law must therefore prioritize accessibility for the public, while also safeguarding the fundamental principles of the legal system.

The recommendation is to promptly amend Article 932 of the Civil Code, which governs the custody of wills by notaries, in order to provide greater flexibility in accommodating exceptional circumstances. For instance, the law should allow the validation of a will without notarial involvement, provided that it meets substantive requirements. Any new norms introduced must be able to reflect existing social realities while safeguarding the integrity of the inheritance law system. The further development of such norms should consider social dynamics and the increasingly complex needs of society.

The implementation of these reforms must be carried out carefully to avoid confusion in practice. Adequate public dissemination and effective monitoring mechanisms are crucial to preventing the misuse of more flexible procedures. This process requires close cooperation between the legislature, legal practitioners, and the public to ensure that the reforms genuinely benefit society and are not exploited by irresponsible actors.

An adaptive and responsive inheritance law system is crucial to ensure that the principles of justice are upheld while addressing the evolving needs of society. Accordingly, the reconstruction of provisions on the custody of holographic wills represents an important step in aligning the law with existing social realities. Law, as a

means of social engineering, must be capable of accommodating diverse and evolving circumstances.(Al Alawi, 2024)While providing fair and adequate solutions for individuals in need.

Overall, the proposed reforms to the regulation of holographic wills are part of a broader effort to make the law more responsive to social dynamics. Legal theory serves as a tool of social engineering, enabling the law to evolve in response to societal needs while upholding the fundamental principles that underpin legal justice. This reconstruction is therefore expected to strengthen the inheritance law system and render it more humane, practical, and efficient.

CONCLUSION

This study underscores the importance of reconstructing the provisions regarding the custody of holographic wills in the Civil Code. Formal procedures that require notarial custody should be revised to provide greater flexibility and responsiveness to specific circumstances. Such reform will not only facilitate the process for testators but also ensure that their testamentary intentions remain protected. The reconstruction must maintain a balance between the principle of the testator's free will and the necessity of legal procedures.

The proposed reconstruction aims to create a framework for validating holographic wills, even in the absence of notarial involvement. Normative solutions, such as the inclusion of additional witnesses or medical evidence, strengthen the legal validity of the will without compromising the principle of prudence. In this way, legal provisions can become more flexible while upholding substantive justice. This legal adjustment is expected to accommodate evolving social dynamics.

The recommendation of this study is to continue the reconstruction of Article 932 of the Civil Code by considering more practical procedural alternatives. Such reforms provide solutions for individuals requiring legal certainty in urgent situations. Moreover, these changes can serve as an initial step toward improving the entire inheritance law system. The implementation of this reconstruction is expected to render Indonesia's inheritance law more adaptive and responsive to contemporary social needs.

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